

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM BOARD OF ADMINISTRATION

MINUTES OF MEETING Draft Monday, May 16, 2011

The Board of Administration met on Monday, May 16, 2011 in the Lincoln Plaza North Building, Auditorium, 400 Q Street, Sacramento, California.

The meeting was called to order at approximately 2:18 p.m. and the following members were present:

Rob Feckner, President
George Diehr, Vice President
Terry McGuire for John Chiang
Dan Dunmoyer
Richard Costigan
JJ Jelincic
Henry Jones
Robert Biegler for Bill Lockyer
Priya Mathur
Louis F. Moret
Tony Oliveira
Greg Beatty for Ronald Yank

Board of Administration Members excused: none

Full Board Hearing - Rita Takahashi

The Board met to convene a full board hearing on the matter of the application for fulltime service credit for sabbatical leaves of Rita Takahashi, respondent, and California State University San Francisco (CSUSF), respondent. The case number is 8373.

Vice President Diehr stated for the record that as a California State University faculty member, he has the right to sabbatical and difference-in-pay leaves, and has taken such leaves. In order to avoid any actual or potential conflict of interest due to these facts, Mr. Diehr irrevocably waived any interest he may have with regard to restoration of his service credit for the difference in pay leave he took in 1999-2000. He also irrevocably waived his right to benefit by any change in policy regarding any reduced pay, sabbatical or difference in pay leaves he may take in the future.

Carol McConnell, CalPERS Senior Staff Counsel, presented a short procedural history of the case and staff's argument for rejecting the Administrative Law Judge's decision.

Ms. Takahashi is a current faculty member of CSUSF who was notified after a CalPERS audit that service credit for two years of difference-in-pay leaves, during which she had opted to receive half pay, had erroneously been credited as two full years.

The Administrative Law Judge had found in his proposed decision that equitable estoppel applied to Ms. Takahashi's second difference-in-pay leave but not the first. Therefore, Ms. Takahashi did not have to purchase the service credit that had erroneously been credited to her for the second leave. CalPERS staff argued that equitable estoppel does not apply to either leave, because several of the conditions required to establish equitable estoppel against a governmental entity had not been met. Additionally, staff argued that CalPERS' authority to calculate service credit is limited to relevant provisions of the Public Employees' Retirement Law (PERL) and cannot be expanded by estoppel. Finally, CalPERS staff argued that CalPERS is required by the PERL to correct errors once discovered.

Ms. Takahashi presented her arguments in support of the proposed decision. She argued that equitable estoppel should apply to spare her from being required to purchase any of the erroneously granted service credit. She asserted that CalPERS had not been diligent in taking corrective action with regard to these leaves and that she had been subjected to disparate treatment, because she knew of another similar case in which the professor did not have to purchase the same erroneous credits as part of a settlement of her claims.

Ms. McConnell offered a rebuttal to Ms. Takahashi's argument that equitable estoppel in this case should apply to CalPERS.

Finally, Ms. Takahashi offered a rebuttal to Ms. McConnell and re-stated her previous arguments.

Members of the Board asked pertinent questions of the parties.

On **MOTION** by Tony Oliveira which was **SECONDED** by Dan Dunmoyer, the Board adopted staff's argument to reject the Administrative Law Judge's proposed decision and denied Ms. Takahashi's appeal. The Board instructed staff to prepare a draft Decision for review by the Board at the June meeting.

There being nothing further to come before the Board of Administration, the meeting adjourned at 3:06 p.m.

ANNE STAUSBOLL
Chief Executive Officer